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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 STACEY JACOBS, a person, and BRANDY
10 JACOBS, a person,

11 Plaintiffs,

12 v.

13 NATIONWIDE INSURANCE COMPANY
14 OF AMERICA, doing business as
15 Nationwide, an insurance company,

16 Defendant.

17 CASE NO. C22-262 RSM

18 ORDER GRANTING
19 DEFENDANT'S MOTION FOR
20 PARTIAL SUMMARY
21 JUDGMENT AND DENYING
22 PLAINTIFFS' MOTION FOR
23 PARTIAL SUMMARY
24 JUDGEMENT

15 **I. INTRODUCTION**

16 This is an insurance coverage action in which the Plaintiffs, Stacey Jacobs and Brandy
17 Jacobs (together the “Jacobs”), assert that Defendant Nationwide Insurance Company of America
18 (“Nationwide”) breached its contract by its refusal to apply the personal property coverage limits
19 of their homeowners insurance policy (the “Policy”). Safeco moves for partial summary
20 judgement (Dkt. #20) and the Jacobs move for partial summary judgment (Dkt. #23). Nationwide
21 opposes (Dkt. #27) and the Jacobs oppose (Dkt. #29). The Court has determined it can rule
22 without the need of oral argument. For the reasons stated below, the Court GRANTS
23 Nationwide’s Motion and DENIES the Jacobs’ Motion.
24

1 **II. BACKGROUND**

2 The Jacobs were insured by Nationwide during the relevant time period pursuant to a
 3 homeowners policy insurance. Dkt. #14 (hereinafter, “Amended Complaint”) ¶ 1.3. In September
 4 2017, the Jacobs erected a 40-feet wide, 80-feet long, and 20-feet tall structure (the “Arena”) on
 5 their property for the purpose of riding horses in inclement weather. Dkt. #22 (“McLean Decl.”),
 6 Ex. 2 at 18:10–21; Amended Complaint ¶ 3.4.

7 On February 13, 2021, the Arena collapsed from the weight of snow. Amended Complaint
 8 ¶ 3.5. The Jacobs allege they informed Nationwide of the damage and that Nationwide failed to
 9 properly investigate and pay the full cost of the insurance claim. *Id.* ¶¶ 3.6, 3.7, 3.91. Plaintiffs
 10 assert that the Arena was personal property, and Nationwide should have paid this loss under
 11 Coverage C of the Policy, Personal Property. Dkt. #23 at 8. Nationwide maintains that it
 12 investigated the loss, determined the Arena to be an “Other Structure,” and issued payments under
 13 the applicable section of the Policy, Coverage B – Other Structures. Dkt #20 at 2.

14 The Policy provides coverage for “direct physical loss” to covered property that is not
 15 otherwise excluded by the terms of the Policy. Dkt. #21 (“Othersen Decl.”), Ex. A at 23, 25. The
 16 Policy describes the property covered under the following relevant terms:

17 SECTION I — PROPERTY COVERAGES

18 **A. Coverage A — Dwelling**

19 1. We cover:

- 20 a. The dwelling on the "residence premises" shown in the Declarations, including
 structures attached to the dwelling; and

21 ...

22 **B. Coverage B — Other Structures**

23 1. We cover other structures on the "residence premises" set apart from the dwelling by
 clear space. This includes structures connected to the dwelling by only a fence, utility line,
 or similar connection.

24 ...

25 **C. Coverage C — Personal Property**

26 1. Covered Property

27 We cover personal property owned or used by an "insured" while it is anywhere in the
 world.

Id. at 14–15.

The parties do not dispute that the Arena was a large, metal-frame structure with a roof, walls, and doors, set upon and fixed to the Jacobs' land for more than three years before the loss occurred. *See* Dkts. #20, 23. Nationwide seeks summary judgement dismissing the Jacobs' breach of contract claim. Dkt. #20. The Jacobs seek summary judgement finding that Nationwide breached its contract by refusing to apply the personal property coverage limit. Dkt. #23.

III. DISCUSSION

A. Legal Standard for Summary Judgment

Summary judgment is appropriate where “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Material facts are those which might affect the outcome of the suit under governing law. *Anderson*, 477 U.S. at 248. In ruling on summary judgment, a court does not weigh evidence to determine the truth of the matter, but “only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco, Inc.*, 41 F.3d 547, 549 (9th Cir. 1994) (citing *Federal Deposit Ins. Corp. v. O’Melveny & Meyers*, 969 F.2d 744, 747 (9th Cir. 1992)).

On a motion for summary judgment, the court views the evidence and draws inferences in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Sullivan v. U.S. Dep't of the Navy*, 365 F.3d 827, 832 (9th Cir. 2004). The Court must draw all reasonable inferences in favor of the non-moving party. See *O'Melveny & Meyers*, 969 F.2d at 747, *rev'd on other grounds*, 512 U.S. 79 (1994). However, the nonmoving party must make a "sufficient showing on an essential element of her case with respect to which she has the burden of proof" to survive summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

1 **B. Analysis**

2 In Washington, the standard for interpreting insurance contracts is well-settled. *Canal*
 3 *Ins. Co. v. YMV Transp., Inc.*, 867 F. Supp. 2d 1099, 1104 (W.D. Wash. 2011). “Interpretation
 4 of insurance policies is a question of law and the policy is construed as a whole with the court
 5 giving force and effect to each clause in the policy.” *Id.* (citing *American Star Ins. Co. v.*
 6 *Grice*, 121 Wash.2d 869, 874, 854 P.2d 622 (1993)). The words of an insurance policy should
 7 be construed according to their ordinary meaning, according to how an average person would
 8 read the terms, as opposed to applying any technical interpretation. *Id.* If the provisions of an
 9 insurance contract are unambiguous and easily comprehended, the intent expressed in the
 10 policy will be enforced regardless of the intent of the parties. *Jeffries v. General Cas. Co. of*
 11 *America*, 46 Wash.2d 543, 283 P.2d 128 (1955). But if an insurance contract is ambiguous “and
 12 fairly susceptible of two different conclusions, the one will be adopted most favorable to the
 13 insured.” *Guaranty Trust Co. v. Continental Life Ins. Co.*, 159 Wash. 683, 294 P. 585 (1930).

14 The Jacobs seek a Court ruling that Nationwide breached its contract when it applied
 15 Coverage B – Other Structures instead of Coverage C – Personal Property to the Arena loss.
 16 Dkt. #23 at 15. The Jacobs argue that the Arena should have been considered personal property
 17 under the Policy, and even if it is not clearly personal property, the policy term was capable of
 18 two reasonable interpretations and should be interpreted in favor of the insured under
 19 Washington law. *Id.* In support, the Jacobs assert that the Arena “merely rested on the ground”
 20 and the rebar stakes attaching it to the land “were thin and easily removed without harming the
 21 land.” *Id.* at 2. Further, the Jacobs argue that the tent was a moveable structure, making it
 22 personal property. *Id.* at 13–14.

23 Nationwide asserts that the Arena was a structure covered under “Other Structures” and
 24 that it paid all amounts owed under the Policy, therefore it did not breach its contract with the

1 Jacobs. Dkt. #20. Nationwide argues that the Arena was a structure set on and attached to the
 2 Jacobs' land making it real property, not personal property. Dkt #20 at 12. Nationwide also
 3 argues that the Policy, read as a whole, consistently treats buildings and structures separately
 4 from personal property which supports a conclusion that the Arena was not personal property
 5 as defined under the Policy. *Id.* at 16.

6 In Response, the Jacobs argue that the dispositive question is whether the Arena was
 7 severable without injury to the land, that Nationwide bears the burden of establishing coverage
 8 should be limited, and that Nationwide separately breached its contract by failing to pay the full
 9 amount owed under the Policy's Debris Removal coverage. Dkt. #29 at 17–18. Nationwide
 10 responds that under Washington law, the Jacobs, not Nationwide, bear the burden of proving they
 11 are entitled to the coverage they seek because Nationwide is not seeking to enforce a coverage
 12 exclusion. Dkt. #31 at 2–3. Nationwide contends that the Jacobs' references to the potential
 13 movability of the Arena are misleading and the evidence in this case demonstrates the Arena more
 14 closely resembles a structure like a shed or garage. *Id.* at 4. Further, Nationwide argues that if the
 15 Court agrees it correctly applied Coverage B, it has paid all amounts owed for the Jacobs' loss
 16 because the Amended Complaint contains no claim regarding any alleged failure to pay the debris
 17 removal claim in full.

18 The Court agrees that the Jacobs, not Nationwide, bear the burden of proving that the Arena
 19 loss "falls within the scope of the policy's insured losses." *McDonald v. State Farm Fire and Cas.*
 20 *Co.*, 119 Wn.2d 724, 731 (1992). The Court finds that the Jacobs have failed to meet their burden
 21 of proof in this case.

22 Nationwide properly determined coverage under Coverage B given the Policy's express
 23 coverage of "other structures on the 'residence premises' set apart from the dwelling by clear
 24 space." Othersen Decl., Ex. A at 14. The Policy, read as a whole, consistently distinguishes

1 coverage for buildings and structures from coverage for personal property. While the Policy
2 language does not expressly define “personal property,” the Policy clearly distinguishes coverage
3 for structures set apart from the dwelling. Furthermore, “terms undefined by the insurance contract
4 should be given their ordinary and common meaning, not their technical, legal meaning.”
5 *Ainsworth v. Progressive Cas. Ins. Co.*, 180 Wn. App. 52, 61–62, 322 P.3d 6 (2014) (citation
6 omitted). The Jacobs cite to Black’s Law Dictionary in support of their definition of personal
7 property (Dkt. #29 at 12–13), but Nationwide is correct in its assertion that undefined policy terms
8 “must be given a fair, reasonable, and sensible construction as would be given by an average
9 insurance purchaser. *Id.* at 62 (citation omitted). It would both redundant and contrary to the
10 Policy’s intent to find that the Arena, which is indisputably a structure, is covered both as personal
11 property and as an “other structure” under the Policy.

12 Merriam-Webster’s Dictionary defines “personal property” as “property other than real
13 property consisting of things temporary or movable.” WEBSTER’S THIRD NEW INTERNATIONAL
14 DICTIONARY 1687 (Philip Babcock Gove et al. eds., 2002). “Real” property is “of or relating to
15 things (as land, tenements) that are fixed, permanent, or immovable[.]” *Id.* at 1890. The Court is
16 not persuaded by the Jacobs’ contention that the structure was moveable and that the rebar bolts
17 affixing it to the land caused no injury to the land when removed. Taking into account the size,
18 characteristics, labor, and manner in which the Arena was attached to the ground, the Court finds
19 the Jacobs’ argument that the Arena was potentially moveable a mere technicality and strained
20 interpretation of this definition. There is no question that the Arena was affixed to the land using
21 rebar bolts driven into the ground. When the Arena was affixed to the land for three years until it
22 collapsed from a weather event, it was real property. Therefore, the Arena does not qualify as
23 personal property under the plain, ordinary, and common meaning of the term. Nationwide
24

1 properly determined the Arena loss was covered under Coverage B – Other Structures when it
2 determined that the Arena was a structure, and not personal property.

3 **IV. CONCLUSION**

4 Having reviewed the relevant pleadings and the remainder of the record, the Court hereby
5 finds and ORDERS that Nationwide's Motion for Partial Summary Judgment, Dkt. #20, is
6 GRANTED and the Jacobs' Motion for Partial Summary Judgment, Dkt. #23, is DENIED.

7 DATED this 1st day of March, 2023.

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10 RICARDO S. MARTINEZ
11 UNITED STATES DISTRICT JUDGE